

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Interconnection Between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

James F. Rogers
Steven H. Schulman
of LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004
Its Attorneys

March 25, 1996

No. of Copies rec'd _____
List ABCDE _____

03

TABLE OF CONTENTS

	<u>Page</u>
I. GENERAL COMMENTS	3
II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS	5
A. Compensation Arrangements	5
1. Existing Compensation Arrangements	5
a. LECs are Overcharging for Interconnection	5
2. General Pricing Principles	10
3. Pricing Proposals (Interim, Long Term, Symmetrical)	11
a. The Record Supports the Commission's Tentative Conclusion to Adopt Bill and Keep as an Interim Method	11
(1) Bill and Keep is Equitable and Efficient	12
(a) Professor Brock's Cost Figures are Supported by the Record	12
(b) Traffic between LECs and CMRS Carriers is Moving Towards Equilibrium	14
(2) The LECs' Objections to Bill and Keep are Unfounded	15
(3) Bill and Keep should be Extended to Interconnection at the LEC Tandem	16
(4) At Present, Negotiated Interconnection Compensation is Unworkable and Unfair	18
b. The Principles of Bill and Keep Should Be Extended to Transport Facilities	18
4. Long-term solutions	19

B.	Implementation of Compensation Arrangements	20
1.	Negotiations and Tariffing	20
2.	Jurisdictional Issues	20
a.	The 1996 Telecom Act Applies Solely to LEC-LEC Interconnection . .	21
b.	Adopting Bill and Keep is Consistent with Section 251 of the 1996 Telecom Act	22
c.	Section 332 Gives the Commission Authority to Regulate LEC-CMRS Interconnection	23
III.	Interconnection for the Origination and Termination of Interstate Interexchange Traffic .	26
A.	Recovery of cost of terminating IXC calls passed through LEC	26
B.	There is No Need to Regulate Direct CMRS-IXC Interconnection	27

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Interconnection Between Local Exchange)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio)	
Service Providers)	

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Introduction and Summary

Not surprisingly, the Commission's proposal to adopt the system of "bill and keep" for interconnection compensation between Commercial Mobile Radio Service ("CMRS") providers and Local Exchange Carriers ("LECs") was supported in the initial comments by CMRS carriers and opposed by LECs. More important than the scoresheet of yeas and nays, however, is the concrete evidence provided throughout all the parties' initial comments that LECs have abused their market power, disregarded the Commission's mutual compensation rules, and charged excessive rates for interconnection. *In fact, the comments of the LECs' own trade association show that each year LECs overcharge CMRS providers roughly half a billion dollars for call termination.* Notwithstanding the vociferous claims of the states and the LECs that the Commission lacks jurisdiction to adopt its proposal, the Commission now has before it an ample record to support the implementation of bill and keep, at least on an interim basis.

In these Reply Comments, Vanguard Cellular Systems, Inc. ("Vanguard"), a cellular service provider with approximately 400,000 subscribers, demonstrates that the record before the Commission in the initial comments filed in this proceeding lends further

support to Vanguard's position. Like Vanguard's initial comments, the comments filed by other commenters convincingly show that:

1. Bill and keep is the only equitable and practical interim method of providing fair and reasonable interconnection between LECs and CMRS providers;
2. Bill and keep should be implemented for interconnection at any feasible point, and should govern the allocation of costs for transport facilities;
3. The relationship between interexchange carriers ("IXCs") and CMRS providers is best governed by good-faith negotiations, except to the extent that LECs pass IXC traffic on to CMRS systems; and
4. The Commission has the authority under the Communications Act, as amended, to implement its proposals and to preempt inconsistent state regulation of LEC-CMRS interconnection.

I. GENERAL COMMENTS

Vanguard and other CMRS carriers in their initial comments submitted actual rate figures and anecdotal evidence to support the Commission's initial determination that LECs have been using their market power to charge CMRS carriers unreasonable rates for interconnection. In response to the *Notice*, only one commenter advocating the LECs' position -- the United States Telephone Association ("USTA") -- submitted an estimate of interconnection costs. The LECs completely failed to explain why the Commission should not adopt bill and keep, preferring instead to hide behind fundamentally incorrect procedural arguments.

Although the commenting LECs almost universally disagreed with Professor Brock's estimate of LEC interconnection costs of \$0.002 per minute, USTA's \$0.013 per minute counter-estimate of the cost of interconnection stands alone. While USTA did not submit sufficient data to allow the Commission to determine the accuracy of this figure, USTA's figures are, in fact, good evidence of the extent to which LECs have been overcharging CMRS providers for interconnection. USTA's asserted cost of \$0.013 per minute is drastically below what the commenters generally agree is the average LEC termination rate of \$0.03 per minute. USTA also asserts that CMRS providers pay between \$800 million and \$1.1 billion to LECs each year for call termination. *In other words, even the cost estimates submitted by the LECs' own trade association show a significant disparity between rates and costs resulting in LECs charging CMRS providers between \$453.3 million*

and \$623.3 million above cost each year for interconnection. Using Professor Brock's cost estimates, the overcharges amount to between \$746 million and \$1.03 billion per year.

Rather than supply cost data, the other LEC commenters use a tactic of misdirection, submitting their interconnection revenues as evidence of the putative harm that would befall them a under bill and keep regime. Given the lack of a competitive LEC market, these revenues are not a proxy for cost, but rather are a reflection of the extent to which LECs have for years been able to extract monopoly rents from CMRS providers.

The only equitable and quick solution to this well-documented overcharging of CMRS providers for interconnection is the immediate implementation of bill and keep. Bill and keep cannot, however, be limited to calls that terminate at the LEC end office, but must be applied to connection at the tandem as well. The cost of transport facilities should be allocated according to the same principle: each carrier should be responsible for maintaining the facilities up to a mutually-agreeable meet point. The other interim interconnection solutions suggested by the Commission or by the commenters will either take too long to implement, set compensation above cost, or will allow LECs to continue to charge monopoly rents.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS

A. Compensation Arrangements

1. Existing Compensation Arrangements

The initial comments show conclusively that LECs have been charging, and plan to continue charging, CMRS providers well above cost for interconnection. While the comments of several CMRS carriers contain anecdotal evidence of LECs ignoring the Commission's rules requiring good-faith negotiations and mutual compensation, the most dispositive evidence of overcharging is the data contained in the LECs' own comments.

a. LECs are Overcharging for Interconnection

The best indication that the current system of "good-faith" negotiations is not working is the staggering disparity between every estimate of the cost of interconnection and the actual per-minute termination rates currently charged by LECs to CMRS providers. According to the initial comments of CMRS providers, current interconnection rates range from \$0.015 per minute^{1/} to \$0.08 per minute.^{2/} There appears to be agreement between CMRS providers and LECs that, on average, CMRS providers currently pay LECs approximately \$0.03 per minute for call termination.^{3/} Using Professor Brock's incremental

1. See Comments of Bell Atlantic NYNEX Mobile at 6.

2. See Comments of Western Wireless Corporation at 16 (describing interconnection rates as "extortion").

3. See Comments of Cox Enterprises, Inc. at 14 & n.27 (citing study of Malarkey-Taylor Associates, Inc., which determined average interconnection rate at \$0.03 per minute); Comments of USTA, Exhibit 1 at 2 ("*Bill and Keep: A Bad Solution to a*

interconnection cost estimate of \$0.002 per minute cited in the *Notice*,^{4/} this average interconnection rate represents a payment by CMRS providers of 15 times cost.

The annual payments by CMRS providers to LECs turn this disparity between per minute costs and per minute rates into a tremendous overcharge. CMRS carriers annually pay LECs interconnection charges of \$800 million, according to CTIA.^{5/} USTA estimates these payments at \$1.1 billion.^{6/} *Assuming an interconnection cost of \$0.002, each year LECs charge CMRS providers amounts that are \$746 million^{7/} to \$1.03 billion^{8/} over cost.*

The LECs vigorously dispute Brock's cost estimate, but even USTA's putative cost figures show massive overbilling. USTA submits a report estimating the cost of termination at \$0.013 per minute, assertedly based upon the addition of some overhead costs not considered by Brock.^{9/} Even under this estimate, the CMRS carriers are paying

Non-Problem") ("USTA Report").

4. Notice at ¶ 61.
5. See CTIA, *Fact Sheet Reciprocal Termination*, Dec. 15, 1995.
6. See USTA Report at 11.
7. \$800 million in payments, at a rate of \$0.03 per minute, represents approximately 26.67 billion terminated minutes per year. At an incremental cost of \$0.002 per minute, this amounts to an annual cost of \$53.3 million and an annual overcharge of \$746.7 million (\$800 million minus \$53.3 million). The USTA report estimates the annual minutes at 34 billion, but does not supply the calculations by which it arrived at this figure. USTA Report at 10 & n.16.
8. \$1.1 billion in payments, at a rate of \$0.03 per minute, represents approximately 36.67 billion terminated minutes per year. At an incremental cost of \$0.002 per minute, this amounts to an annual cost of \$73.3 million and an annual overcharge of approximately \$1.03 billion (\$1.1 billion minus \$73.3 million).
9. USTA Report at 9. This report lacks any substantial foundation for this figure that would allow the Commission to test the accuracy.

interconnection charges at 230% of cost. *In other words, even the LECs' most favorable cost estimates amount to \$453.3 million^{10/} to \$623.3 million^{11/} in overpayments every year to LECs at the expense of the CMRS industry.*

Only one other LEC submitted data that could even be interpreted as an estimation of cost, and it is much less favorable to the LECs than the estimate provided by USTA. Frontier Corporation, the parent of Rochester Telephone Company, does not dispute Brock's calculations, but suggests that instead of bill and keep the Commission should adopt a benchmark rate of \$0.005 per minute for connection at the end office and \$0.0074 per minute for connection at the tandem.^{12/} These rates are based upon a tariff filed by Ameritech in Illinois and, according to Frontier, are "closely aligned" with cost.^{13/} (Ameritech, notably, supplies no cost estimates in its own comments, but does dispute Professor Brock's analysis as "philosophically flawed.")^{14/} If the Frontier/Ameritech interconnection cost figures are accurate -- and it would be surprising if a LEC asked the Commission to adopt a rate equal to cost -- the LECs' current average rate of \$0.03 per minute is still between four and six times cost, depending upon the point of interconnection.

10. \$800 million in payments, at a rate of \$0.03 per minute, represents approximately 26.67 billion terminated minutes per year. At an incremental cost of \$0.013 per minute, this amounts to an annual cost of \$346.7 million and an annual overcharge of \$453.3 million (\$800 million minus \$346.7 million).

11. \$1.1 billion in payments, at a rate of \$0.03 per minute, represents approximately 36.67 billion terminated minutes per year. At an incremental cost of \$0.013 per minute, this amounts to an annual cost of \$476.7 million and an annual overcharge of approximately \$623.3 million (\$1.1 billion minus \$476.7 million).

12. See Comments of Frontier Corp. at 8-9.

13. *Id.*

14. See Comments of Ameritech at 9.

b. Few LECs Pay Mutual Compensation

These overcharges are exacerbated by the LECs' near-universal refusal to honor the Commission's mutual compensation rules and pay CMRS providers for terminating LEC-originated calls. CMRS commenters reported, at best, receiving mutual compensation from only a handful of the LECs with which they interconnect;^{15/} other CMRS providers stated that they either receive no compensation,^{16/} or, worse yet, are charged by the LECs for terminating LEC-originated calls.^{17/}

The LECs openly admit their refusal to pay mutual compensation. GTE, in obvious ignorance or disregard of the law, says that it "*cannot support mutual compensation*" unless it can recover its (undefined) interconnection costs from its subscribers.^{18/} USTA tacitly admits that few LECs pay mutual compensation to CMRS providers, asserting instead that CMRS carriers are compensated through a discount in the LECs' per minute termination rate.^{19/} This "discount" is complete speculation; USTA provides no support for this claim, nor did any LEC or CMRS carrier report such a practice, nor has Vanguard ever been compensated in this manner.

15. See, e.g., Comments of Bell Atlantic NYNEX Mobile, Inc. at 4-5 (BANM receives mutual compensation in only one of 19 markets and must pay to terminate LEC-originated calls in two states); Comments of 360° Communications Company (receives reciprocal compensation from only one LEC).

16. See, e.g., Comments of Western Wireless at 13; Comments of New Par at 5 ("LECs have blatantly disregarded the Commission's Mutual Compensation requirement").

17. See, e.g., Comments of CMT Partners at 4; Comments of Century Cellunet at 4.

18. Comments of GTE at 18-19.

19. Comments of USTA at 5.

c. The Anecdotal Evidence Supports the Data

The comments of cellular carriers consistently told of LECs ignoring the Commission's mutual compensation rules and refusing to engage in good-faith negotiations for interconnection rates. The comments of Centennial Cellular Corporation provide perhaps the most detailed account of LEC-CMRS negotiations.^{20/} Centennial (including its affiliates) provides cellular service in 28 markets, and is a PCS licensee and competitive access provider in Puerto Rico, where the sole LEC is Puerto Rico Telephone Company ("PRTC"). Centennial's Case Study recounts the progress of negotiations with PRTC, which has failed to recognize its duty to provide mutual compensation and has used the PCS negotiations to gain leverage in its competition with Centennial's competitive access provider affiliate.

d. The LECs Deny There is a Problem

In light of the overwhelming record that the LECs are abusing their market power, the LECs arguments that the status quo is working are easily dismissed. First, some LECs' argue that the growth of the cellular industry and the price paid for PCS licenses prove that no problem exists with the current system of "good faith" negotiations.^{21/} The weakness of this argument is fairly obvious: the cellular industry may well have grown faster if its growth had not been impeded by the LECs. Moreover, CMRS providers are far from full competitors in the local loop. LECs are not as interested in preventing occasional mobile use as they are in blocking any real competition in their local loop market.

20. See Comments of Centennial Cellular Corp. at Exhibit 1 ("Puerto Rico Case Study"); see also Comments of Vanguard at Exhibit A.

21. See, e.g., Comments of Ameritech at 4 ("there is no real 'problem' to be 'solved.'"); Comments of Pacific Telesis Group at 28.

Second, other LECs assert that a purported lack of formal FCC complaints demonstrates that there are no problems with the current interconnection methods.^{22/} The cost and delay of litigation may be responsible for aggrieved CMRS carriers not pursuing this avenue.^{23/} More significantly, the record shows that CMRS providers have complained loudly. The Commission began this proceeding because it had received many complaints regarding the current system of negotiated interconnection in the comments in Docket 94-54.^{24/} Moreover, cellular carriers have filed numerous complaints with many state PUCs in response to unreasonable LEC interconnection rates.^{25/}

The evidence shows that there is a problem. LECs are persistently--and openly--overcharging CMRS providers for interconnection and disregarding the Commission's mutual compensation rules. It is time for the Commission to remedy this situation.

2. General Pricing Principles

There can be little doubt, after reviewing the divergent estimates of interconnection costs and the various methods of arriving at cost, that establishing a cost-based rate structure would be expensive and time-consuming. Rate proceedings, due to their

22. See, e.g., Comments of Ameritech at 4.

23. See Alliance of Wireless Providers at 5 (consortium of cellular companies controlling approximately 25 markets report that its members have experienced severe problems obtaining reasonable interconnection, but have not filed complaints before the FCC due to the expense and delay).

24. See Notice at ¶ 26.

25. See Comments of Vanguard at 7-9.

expense, are disfavored by Congress.^{26/} Rate proceedings very well may not yield accurate results, either, as demonstrated by the disagreement among commenters as to the appropriate method of determining cost.^{27/} A pricing method based upon rate proceedings or other investigations of cost is therefore inappropriate for any interim interconnection compensation policy.

3. Pricing Proposals (Interim, Long Term, Symmetrical)

The comments provide ample support for the Commission's tentative conclusion that bill and keep would be the easiest and most fair interim compensation scheme. Long-term, the Commission should allow negotiation only when competition results in fairly equal bargaining strength.

a. The Record Supports the Commission's Tentative Conclusion to Adopt Bill and Keep as an Interim Method

In proposing bill and keep as the interim method for LEC-CMRS interconnection at the LEC end office, the Commission noted that it would be an equitable and efficient method of compensation, would require little administrative oversight, and would deprive the LECs of the opportunity to exert market power.^{28/} The record clearly supports these tentative conclusions. For the same reasons it proposed bill and keep, the Commission should extend bill and keep to any mutually-agreeable point of interconnection.

26. See Comments of the General Services Administration at 6 ("it is no longer the role of either this Commission or state commissions to conduct cost-finding investigations").

27. See, e.g., Comments of Sprint Spectrum and APC at 15-18; Comments of Pacific Telesis at 34-40.

28. Notice at ¶ 60-62.

(1) Bill and Keep is Equitable and Efficient

Bill and keep is an equitable and efficient method of compensation assuming either that (i) the incremental costs of interconnection are minimal; or (ii) the traffic between the carriers is in equilibrium.^{29/} As set forth below, LECs have provided little evidence to counter Professor Brock's conclusion that the incremental cost of interconnection is very low. Moreover, several commenters suggested that traffic between CMRS providers and LECs is moving towards equilibrium.

(a) Professor Brock's Cost Figures are Supported by the Record

The record supports Professor Brock's conclusion that the cost of interconnection is minimal (\$0.002 per minute). As noted above, among the LECs, only USTA submitted estimates of cost in order to contest Brock's conclusion.^{30/} Perhaps most indicative of the accuracy of Brock's estimate is the failure by every other LEC commenter to supply counter-evidence on interconnection costs; NYNEX, in fact, could only state that the costs are "small per minute."^{31/} The LECs were not short on invective, however -- US West, for one, called Brock's formula a "gross underestimation" of cost^{32/} -- or irrelevant

29. See Notice at ¶ 61.

30. Frontier submitted the Ameritech tariff figures to suggest a benchmark rate, and did not dispute Brock's estimate. Even so, those figures are more in line with Professor Brock's than with USTA's estimates.

31. Comments of NYNEX, Exhibit A, Report of William E. Taylor at 19 (attacking Professor Brock's analysis, but admitting that LEC costs are "small per minute"). See also Comments of Cincinnati Bell Telephone at 5 ("CBT's interconnection costs are *not* close to zero. CBT's cost-based interconnection rates are low.").

32. Comments of US West at 32.

interconnection revenue figures.^{33/} The Commission should not be led astray by this attempt to equate lost revenues with the cost of interconnection; as shown above, there is little correlation between the LECs' interconnection revenues and the actual cost of interconnection.

The state-mandated rates for interconnection between LECs and competitive LECs ("CLECs"), supposedly based on cost, are not materially higher than Brock's estimate. The interconnection rates set by New York State for LEC-LEC interconnection are very close to Brock's figures.^{34/} The peak period rates are \$0.0074 per minute for end office interconnection and \$0.0098 per minute at the tandem; at off-peak the rates are \$0.0027 per minute at the end office and \$0.0029 at the tandem.^{35/} Using Brock's methodology for determining the average cost of interconnection (i.e., 8.9% of usage is at peak),^{36/} then the average cost of tandem interconnection is \$0.0035 per minute, and end office interconnection is \$0.0031 per minute, still quite low and only slightly higher than Brock's \$0.002 per minute.

Professor Brock's analysis has been before the Commission for nearly one year, and the LECs have failed to supply a detailed or convincing refutation of his conclusions. USTA's cost estimates are unsupported by any hard data, and, given Frontier's

33. See, e.g., Comments of NYNEX at 15 (claiming that NYNEX would lose \$48 million in revenues); Comments of Pacific Telesis Group at 17 (alleges "huge shortfall" in cost recovery, noting that it collects interconnection for both origination and termination).

34. Comments of the State of New York Department of Public Service at 6.

35. *Id.*

36. Brock, *Incremental Cost of Local Usage*, at 3.

much lower suggested benchmark rate, can be dismissed as overly generous to the LECs. On this record, the Commission can, and should, conclude that the LEC costs of interconnection are, at most, minimal. Bill and keep is therefore justified.

(b) Traffic between LECs and CMRS Carriers is Moving Towards Equilibrium

With LEC-CMRS traffic moving towards equilibrium, the second justification for bill and keep may soon be realized. Several commenters suggested that the balance in traffic is moving towards equilibrium. In addition, "equilibrium" can mean equal *costs* of interconnection, which, the record shows, may be reached when traffic is less than balanced.

Sprint Spectrum, with its long-lasting phone batteries, caller identification and free first minute for incoming calls, reports that 42% of its PCS system's traffic originates from the landline.^{37/} A report submitted by CTIA also states that LEC-CMRS traffic is moving towards equilibrium, with other CMRS providers adopting some of the same efficiencies that encourage Sprint Spectrum customers to accept incoming calls.^{38/}

Moreover, bill and keep may be efficient even if LECs terminate more than 50% of the traffic, as several commenters stated that costs of CMRS call termination may be higher than for LEC call termination. Both call termination and network capacity upgrades are more expensive for CMRS systems than for LEC networks. While a call to a landline number follows much the same route every time, a similar call to a mobile number requires a search for the customer and, if the call is not connected, the CMRS provider must absorb

37. Comments of Sprint Spectrum and American Personal Communications at 2-3 & n.5, 21.

38. Comments of CTIA at Exhibit A, Report of Charles River Associates at 19.

"non-revenue" airtime.^{39/} AT&T Wireless notes that where LEC systems can increase capacity by simply adding trunks, CMRS providers need to construct new cell sites, resector existing cells and redistribute channels throughout the system.^{40/}

Furthermore, LEC costs may be decreasing in the future with the advent of local exchange competition. The LECs may not have the same need for the capacity built while they were the only carriers in the local exchange, according to Teleport Communications Group, a CLEC.^{41/} CMRS systems decrease the burden on the LEC network by replacing calls that before would have both originated and terminated on a landline phone. In addition, CLEC competition will reduce the loads on LEC networks, resulting in many calls that will never traverse the LEC network.

(2) The LECs' Objections to Bill and Keep are Unfounded

The LECs' objections to bill and keep amount to nothing more than a desire to retain the benefits of their market power. Some LECs assert that bill and keep will lead to "arbitrage," whereby the IXC's will avoid access charges by passing their LEC-bound calls through a CMRS provider.^{42/} The LECs offer no foundation for this speculation.

39. See Comments of Time Warner Communications Holdings at 10.

40. Comments of AT&T Wireless at 10.

41. Comments of Teleport Communications Group at 17 (CMRS and CLEC networks are "likely to *reduce* the ILEC's costs" and demands on ILEC's networks will decline over time).

42. See, e.g., Comments of GTE at 39 (hypothesizing that AT&T would pass interexchange traffic through its wireless affiliate to avoid access charges).

The LECs also attempt to frighten the Commission by threatening to raise subscriber rates to compensate for "lost revenue" from bill and keep.^{43/} There is, however, nothing in the record to substantiate the claims that rates will increase. Moreover, the record shows that the bulk of these interconnection revenues consists of overcharges for call termination. While it would be premature to speculate as to the effect on LEC subscriber rates of adopting bill and keep, if LECs raised rates to replace the revenue from these overcharges, it would only reflect the end of a subsidy for LEC subscriber rates paid for by CMRS providers.

As a common carrier providing exchange service, CMRS providers have never been subject to these interstate charges. Instead, CMRS providers are "entitled to interconnection arrangements that 'minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer.'"^{44/} Adopting an interconnection compensation scheme based upon even a subset of access charges ignores the policy bases for the differentiation between IXCs and CMRS.

(3) Bill and Keep should be Extended to Interconnection at the LEC Tandem

The Commission's objectives in adopting bill and keep could be frustrated by limiting this principle to interconnection at the LEC end office. Both the interconnection policy considerations and the record support extending bill and keep to the LEC tandem office.

43. See, e.g., Comments of Home Telephone Company at ¶ 1 (increase of 12% to subscribers); Comments of National Telephone Coop. Ass'n at 11-12.

44. *In re The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 Rad. Reg.2d 1275, 1284 (1986), *modified on other grounds*, 2 F.C.C. Rcd. 2910 (1987), *clarified*, 4 F.C.C. Rcd. 2369 (1989).

First, while the interconnection requirements of the Telecommunications Act of 1996 (the "1996 Telecom Act") apply solely to LEC-LEC interconnection,^{45/} the policy that interconnection between co-carriers must be made "at any technically feasible point" is equally applicable to LEC-CMRS connection.^{46/} Allowing LECs to charge for transport between the tandem and the end-office will have one of two results. Either it will allow LECs to continue to exploit their market power advantage by charging above-cost rates, or it will encourage CMRS providers to interconnect at the end-office, even if it requires redundant systems or other inefficient arrangements.^{47/}

Second, since CMRS providers and LECs are co-carriers, there is no more compelling reason to require CMRS providers to interconnect at the LEC end office than there is to require LECs to terminate their traffic at each CMRS cell site, rather than at the MTSO. Such requirement would be inefficient, encouraging redundant facilities. Adopting a rule which requires CMRS interconnection at the end-office only perpetuates the LECs' refusal to recognize CMRS providers as co-carriers.

Third, and perhaps most significantly, there is no cost justification for limiting interconnection to the end office. The cost difference between interconnection at the tandem

45. See *infra* at Section II.B.2 (discussion of impact of Telecommunications Act of 1996 on LEC-CMRS interconnection).

46. See also *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 Rad. Reg. 2d (P&F) 1275, 1284 (1986) (CMRS providers are "entitled to interconnection arrangements that 'minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer.'").

47. See Comments of CTIA at 44-45.

and at the end office is minimal, and during non-busy hours, the incremental cost of connecting at either location is zero.^{48/}

(4) At Present, Negotiated Interconnection Compensation is Unworkable and Unfair

Almost uniformly, the LECs suggest that the Commission retain its system of "good-faith" negotiations.^{49/} As discussed above, the commenters have shown that negotiated interconnection results in tremendous overcharges to CMRS providers. Such a system cannot be retained if CMRS is to continue to grow and to become competitive in the local exchange market.

b. The Principles of Bill and Keep Should Be Extended to Transport Facilities

The Commission should extend the application of the principles of reciprocal and symmetrical compensation to the allocation of the cost of transport facilities.^{50/} There is no more justification for allowing LECs to charge above-cost rates for transport facilities than there is for permitting them to continue to charge high rates for per-minute call termination. The co-carrier relationship between LECs and CMRS providers require that these costs be shared, not apportioned solely to one party as proposed in the *Notice*.^{51/}

48. Comments of CTIA at 44.

49. See, e.g., Comments of GTE at 17; Comments of Bell Atlantic at 9.

50. See Comments of Sprint Corp. at 12.

51. See *Notice* at ¶ 66.

At present, LECs provide the transport facilities to connect the LEC and CMRS systems, charging the CMRS providers 100% of the asserted cost.^{52/} The Commission should correct this practice, and apply bill and keep principles to transport facilities. One solution would be to require each party to maintain such facilities up to a meet point, rather than allowing one carrier to install and charge for cost of facilities. This is the system used in Washington State, where the PUC requires competing LECs to share interconnection costs,^{53/} and is supported by at least one LEC commenter.^{54/}

4. Long-term solutions

Negotiated interconnection, as now occurs successfully between LECs, and between CMRS providers and IXC, is the best long-term compensation system. If the Commission's proposed interconnection rules and the changes to the local exchange market mandated by the 1996 Telecom Act are successful, then the local exchange market will someday be competitive. At that point, CMRS providers should have enough bargaining power to negotiate on an even playing field with the LECs, much like they do now with the IXCs. The Commission should keep its interim interconnection rules in place until the local exchange market is competitive, and then allow parties to negotiate interconnection agreements in the free market.

The record demonstrates that negotiations between carriers with equal bargaining power will yield the best results. Even the LECs appear to agree, but they

52. See, e.g., Comments of American Personal Communications at 5; Comments of AT&T Wireless Services, Inc. at 6, 11-12.

53. *Washington Util.* at 45-46.

54. See Comments of National Tele. Coop Ass'n at n.18.

contend CMRS carriers and LECs enjoy equal bargaining power today.^{55/} In contrast, cost-based methods of interconnection compensation, while attractive in theory, will be administratively difficult to establish and implement.

Even if a decision can be reached on the appropriate definition of the cost of interconnection, determining those costs will involve expensive and protracted proceedings. The different network structures of CMRS systems and local exchange systems will require two different determinations of cost. The record also indicates that tracking and billing for cost-based compensation can exceed the net compensation itself, leaving both carriers with a loss.^{56/} Moreover, as New Par points out, the 1996 Telecom Act expresses Congressional disfavor of extensive hearings to determine cost of interconnection.^{57/}

B. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

Vanguard has no further comments on negotiation and tariffing, but reiterates its position that any LEC-CMRS contracts should be filed with the states to allow all carriers equal access to information.

2. Jurisdictional Issues

The 1996 Telecom Act does not alter the Commission's authority to adopt bill and keep and to preempt state regulation of LEC-CMRS interconnection. Nearly every LEC commenting in this proceeding contends that the 1996 Telecom Act removed the

55. See, e.g., Comments of Concord (N.C.) Telephone Company at 2.

56. See Comments of Teleport Communications Group at 10, n. 17 (citing Oregon and Washington state proceedings).

57. Comments of New Par at 8, citing § 251(d)(2)B(ii).

Commission's jurisdiction over LEC-CMRS interconnection, and adopted instead a system of negotiated interconnection to be enforced by the states through arbitration.^{58/} This interpretation is an unwarranted broadening of the interconnection provisions of the new statute, which are intended to apply solely to LEC-LEC interconnection.

First, the Commission still retains the plenary jurisdiction over LEC-CMRS interconnection found in Sections 201 and 332 of the Communications Act. Second, even if the interconnection provisions 1996 Telecom Act were to apply to LEC-CMRS interconnection, the Commission has ample authority to adopt bill and keep as an overarching federal framework for negotiated interconnection. Third, the record in this proceeding establishes that the Commission should exercise its authority to preempt state regulation of LEC-CMRS interconnection.

a. The 1996 Telecom Act Applies Solely to LEC-LEC Interconnection

The LECs contend that the Commission no longer has jurisdiction over LEC-CMRS interconnection because Section 251 of the 1996 Telecom Act requires negotiated interconnection, enforced by state arbitration. The LECs base this theory primarily upon an overly-literal reading of Section 251, which imposes obligations on LECs to negotiate in good faith with any "requesting telecommunications carrier" and establishes a framework for those negotiations.^{59/} This framework is to be implemented by the Commission through new rules.

58. See, e.g., Comments of Bell Atlantic at 3-6; Comments of USTA at 15.

59. See, e.g., Comments of GTE.

This interpretation ignores the fact that Congress has already addressed CMRS interconnection issues, giving the Commission plenary jurisdiction over mobile services in the 1993 Budget Act, which adopted Section 332.^{60/} Just three years later, Congress had no intention of disturbing this law; the 1996 Telecom Act makes clear that Congress intended the new interconnection provisions to extend the CMRS deregulatory policy to LEC-LEC interconnection. For example, Section 251(i) preserves the Commission's authority under Section 201 of the Communications Act, which enables the Commission to regulate LEC-CMRS interconnection pursuant to Section 332(c)(1)(B).^{61/} In Section 252, state authority over the interconnection agreements negotiated pursuant to Section 251 is made subject to Section 253, which explicitly states that it does not affect the application of Section 332. The Commission's authority under Sections 201 and 332 is therefore undisturbed.

b. Adopting Bill and Keep is Consistent with Section 251 of the 1996 Telecom Act

Even if the interconnection provisions in the 1996 Telecom Act governed LEC-CMRS interconnection, the Commission could adopt bill and keep as a framework for the interconnection negotiations mandated by Section 251.^{62/} Section 251(b)(5) explicitly requires LECs to provide reciprocal compensation arrangements. Section 251(d)(1) directs the Commission to establish regulations to implement LEC interconnection requirements,

60. See, e.g., Comments of Cox Enterprises, Inc. at 43.

61. See Comments of CTIA at 62-63.

62. See Comments of the General Services Administration at 8 (the 1996 Telecom Act's requirement that each carrier be compensated for termination "virtually requires bill and keep," because, given the differences in costs and structure of call terminations by wireline and wireless systems, a cost-based method "could never appropriately compensate both carriers").